

POPPI KUSH SWINDELL,

Plaintiff,

vs.

CHARLOTTE MECKLENBURG BOARD
OF EDUCATION,

Defendant.

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Rule 12(a)(1)(A) of the Federal Rules of Civil Procedure establishes that “[a] defendant must serve an answer[] within 21 days after being served with the summons and complaint.” Rule 55(a) of the Federal Rules of Civil Procedure further provides: “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party’s default.” However,

where a defendant appears and indicates a desire to contest an action, a court may exercise its discretion to refuse to enter default, in accordance with the policy of allowing cases to be tried on the merits. In the final analysis, default judgments are not favored in the law, and the entry of such a judgment is only appropriate where there has been a clear record of delay or contumacious conduct.

Wendt v. Pratt, 154 F.R.D. 229, 230 (D. Minn. 1994) (internal quotation marks and citations omitted) (cited in 10A C. Wright, A. Miller & M. Kane, Federal Practice & Procedure § 2682 (3d ed. 2006)). Finally, Rule 55(b)(1) establishes that if a “plaintiff’s claim is for a sum certain or a sum that can be made certain by computation, the clerk—on the plaintiff’s request, with an affidavit showing the amount due—must enter judgment for that amount and costs against a defendant who has been defaulted for not appearing. . . .” FED. R. CIV. P. 55(b)(1). Thus, the entry of default judgment is proper only where two requirements are met: (1) the defendant has failed to appear, and (2) the claim is for a sum certain. Id.


Applying these same principles to the facts at bar, the Court finds no justification for entry of default against Defendant. Defendant has plead as provided by the Federal Rules of Civil Procedure, and as such entry of default is improper. Further, because Defendant has appeared in this matter, entry of default judgment is also inappropriate at this junction. Accordingly, the Court

DENIES Plaintiff's Motion for Entry of Default, (Doc. No. 7), and Plaintiff's Motion for Default Judgment, (Doc. No. 8).

IT IS THEREFORE ORDERED that Plaintiff's Motion for Entry of Default, (Doc. No. 7), and Plaintiff's Motion for Default Judgment, (Doc. No. 8), are hereby DENIED.

IT IS SO ORDERED.

Signed: January 11, 2023


Frank D. Whitney
United States District Judge

